

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARK A. MARKUSSEN,

Plaintiff,

v.

BERNARD WARNER, et al.,

Defendant.

CASE NO. C16-5251BHS-DWC

ORDER DENYING PLAINTIFF'S
MOTION TO ADD ADDITIONAL
EVIDENCE AND ADOPTING
REPORT AND
RECOMMENDATION

This matter comes before the Court on the Report and Recommendation ("R&R") of the Honorable David W. Christel, United States Magistrate Judge (Dkt. 15), Plaintiff Mark Markussen's ("Markussen") objections to the R&R (Dkt. 21), and Markussen's motion to add additional evidence (Dkt. 22).

On August 16, 2016, Judge Christel issued the R&R recommending that the Court grant Defendants' motion for summary judgment because Markussen failed to submit sufficient evidence in support of his claims and failed to show that three of the four defendants personally participated in the alleged unlawful conduct. Dkt. 15. On November 9, 2016, Markussen filed objections, Dkt. 21, and a motion to add additional evidence, Dkt. 22. On November 17, 2016, Defendants responded. Dkt. 24.

1 **A. Additional Evidence**

2 Although Markussen’s motion is titled as a motion to add additional evidence, he
3 fails to identify what additional evidence he seeks to add in support of his claims.
4 Instead, he set forth conclusory government conspiracy allegations and requests that he
5 should be exonerated, immediately released, and compensated for false imprisonment.
6 Dkt. 22 at 1–2. The Court concludes that the motion is wholly without merit and denies
7 the motion.

8 **B. R&R**

9 The district judge must determine de novo any part of the magistrate judge’s
10 disposition that has been properly objected to. The district judge may accept, reject, or
11 modify the recommended disposition; receive further evidence; or return the matter to the
12 magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

13 In this case, Markussen has failed to show any error in the R&R. First, Defendant
14 David Bailey is the only individual that personally participated in the allegedly improper
15 act of opening Markussen’s legal mail. Markussen failed to submit any evidence to
16 counter this finding. Therefore, the Court adopts the R&R dismissing the other three
17 defendants for lack of personal participation.

18 Second, Markussen fails to show that Judge Christel’s conclusions on the merits of
19 his claims are erroneous. Markussen failed to establish a First Amendment claim because
20 he failed to show interference with a legal proceeding or repeated interference with his
21 allegedly legal mail. *See, e.g., Davis v. Goord*, 320 F.3d 346, 352 (2d Cir. 2003) (“Davis
22 fails to state a constitutional claim for violating his right to send and receive legal mail

1 because he alleges neither the establishment of an ongoing practice by prison officials of
2 interfering with his mail nor any harm suffered by him from the tampering.”). Markussen
3 failed to establish a Due Process claim because the evidence in the record shows that he
4 was provided at least two opportunities to remove the rejected material from his mail
5 before sending and that he refused to remove it. Markussen failed to show what more
6 process is due. Markussen’s retaliation claim fails because he failed to establish any
7 dispute of material fact on every element of this claim. Dkt. 15 at 14–15. Therefore, the
8 Court having considered the R&R, Markussen’s objections, and the remaining record,
9 does hereby find and order as follows:

- 10 (1) The Court **DENIES** Markussen’s motion (Dkt. 22);
11 (2) The R&R is **ADOPTED**;
12 (3) Defendants’ motion for summary judgment is **GRANTED**;
13 (4) Markussen’s *in forma pauperis* status is **REVOKED**; and
14 (5) The Clerk shall enter **JUDGMENT** for Defendants and close this case.

15 Dated this 27th day of January, 2017.

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18 BENJAMIN H. SETTLE
United States District Judge
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